

111 FERC ¶ 61,163  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suede G. Kelly.

PJM Interconnection, L.L.C.

Docket Nos. ER05-319-000 and  
ER05-319-001

ORDER ACCEPTING SERVICE AGREEMENTS  
SUBJECT TO CONDITIONS

(Issued May 6, 2005)

1. In this order we conditionally accept an executed interconnection service agreement (Interconnection Agreement) between PJM Interconnection, L.L.C. (PJM), Public Service Electric & Gas Company (PSE&G) and MM Hackensack Energy, LLC (Hackensack). We also accept a Notice of Cancellation of an existing interconnection agreement between the same parties (Cancelled Agreement). This order benefits customers because it ensures the smooth processing of interconnection-related agreements and ensures interconnection customers the benefits of standardized interconnection terms and conditions.

**I. Background**

2. On December 8, 2004, PJM filed an executed Interconnection Agreement in order to interconnect Hackensack's 2.85 MW generator to PSE&G's 26.4 kV facilities, which in turn connects to PJM's transmission grid.<sup>1</sup> Currently, Hackensack has a 1.9 MW generating facility interconnected with PSE&G's electric system. The new

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<sup>1</sup> Because this generator is less than 20 MW in size, the Commission's large generator interconnection rules do not apply. *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (2005), FERC Stats. & Regs. ¶ 31,171 (2004), *reh'g pending*. However, PJM's tariff, accepted in *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 (2004) (July 8 Order), clarifies that PJM treats small generator interconnections according to the rules governing large generator interconnections. *See* section 110.5 of PJM's Open Access Transmission Tariff (OATT).

Interconnection Agreement allows for Hackensack to add an additional 950 kW in capacity to its existing generating facility and replaces the Cancelled Agreement.<sup>2</sup>

3. PJM explains that the Interconnection Agreement differs from the *pro forma* interconnection agreement in PJM's OATT.<sup>3</sup> PJM states that the parties agreed to revise PJM's *pro forma* interconnection agreement to reflect provisions in the Cancelled Agreement that differ from the corresponding provisions of PJM's *pro forma* interconnection agreement. For instance, in Schedule G of the Interconnection Agreement, the parties agreed that: (1) section 55.3.4 (Rescheduling of Planned Outages) of PJM's OATT would not apply; (2) Hackensack's generating facility would meet specific power specifications different from the ones established in PJM's *pro forma* interconnection agreement; (3) the indemnity provision would be one-way as between Hackensack and PSE&G, in favor of PSE&G (instead of PJM's *pro forma* interconnection agreement's standard three-way indemnity provision); (4) Hackensack would maintain disconnection device equipment different than that required by PJM's *pro forma* interconnection agreement; (5) the inspection, testing, and facility maintenance provisions would differ from those in PJM's *pro forma* interconnection agreement; (6) the rights of access provision of PJM's *pro forma* interconnection agreement would not apply; (7) a different emergency conditions provision would control over the one in PJM's *pro forma* interconnection agreement; (8) different operating procedures would apply to Hackensack's facility; (9) notwithstanding section 58.1 of PJM's OATT, there is no need to install additional meters; and (10) the interconnection with PJM's transmission system is indirect, since the interconnection is to a PSE&G non-transmission facility.

4. PJM also states that it modified the Interconnection Agreement to specify that: (1) this Interconnection Agreement supercedes the Cancelled Agreement; (2) no facilities study was necessary; (3) the signature block includes the printed name of the signer; and (4) correcting several typographical errors. Finally, PJM explains that the

Interconnection Agreement includes as an attachment several sets of definitions. Overall, PJM describes the changes as minor and not substantial.<sup>4</sup>

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<sup>2</sup> The Cancelled Agreement, which interconnected Hackensack's 1.9 MW generating facility, was accepted for filing in a letter order issued December 12, 2002, in Docket No. ER03-67-000.

<sup>3</sup> The standard interconnection service agreement in Subpart E of the interconnection portion of PJM's OATT is referred to as the *pro forma* interconnection agreement. Where we refer to the specific Interconnection Agreement at issue in this proceeding, we will call it simply "the Interconnection Agreement."

<sup>4</sup> See PJM's transmittal letter at p. 4.

5. On February 3, 2005, Commission staff issued a deficiency letter (the Deficiency Letter) to PJM. The Deficiency Letter requested that PJM justify its deviations from its *pro forma* interconnection agreement. PJM filed a response on March 7, 2005, in which it stated that its proposed changes were just and reasonable because they are consistent with a June 12, 1998 Operations, Coordination and Interconnection Agreement (OCIA). PJM argues that PSE&G should be allowed to retain the benefits it bargained for at that time. In response to staff's question about indemnification, PJM responds that the same risks exist today as when PSE&G and Hackensack entered into the initial agreement. PJM notes that this interconnection is to PSE&G's "distribution" system and that any indemnification expenses would be borne by ratepayers. In response to staff's question about inspection and testing procedures, PJM responds that PSE&G's right to inspect, test, and disconnect Hackensack's facility from the grid is greater than that allowed under PJM's *pro forma* interconnection agreement and that the provisions of PJM's *pro forma* may be insufficient to protect the PSE&G's system should there be a reliability problem associated with Hackensack's facility.

6. PJM also points out that Hackensack has not protested the inclusion of these non-conforming provisions. Finally, PJM notes that the Commission accepted a similar agreement between the same parties via delegated letter authority on February 2, 2005, in Docket No. ER05-318-000.

7. Finally, PJM requests waiver of the Commission's prior notice requirement in order to allow the Interconnection Agreement to become effective November 8, 2004.

## **II. Notice of Filing**

8. Notice of PJM's December 20, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 75,946 (2004), with interventions and protests due on or before December 29, 2004. Notice of PJM's March 7, 2005 amended filing was published in the *Federal Register*, 70 Fed. Reg. 16,495 (2005), with interventions and protests due on or before March 29, 2005. No protests, adverse comments, or motions to intervene were filed in response to either notice.

## **III. Discussion**

9. In Order No. 2003, the Commission required Transmission Providers (such as PJM) to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents.<sup>5</sup> The use of *pro forma* documents ensures that Interconnection Customers, such as Hackensack, are receiving non-discriminatory service and that all Interconnection Customers are treated on a consistent and fair basis. Using *pro forma* documents also streamlines the

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<sup>5</sup> See Order No. 2003, *passim*.

interconnection process by eliminating the need for an Interconnection Customer to negotiate each individual agreement. This reduces transaction costs, ensures that all Interconnection Customers are being treated fairly, and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.<sup>6</sup>

10. At the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming agreement.<sup>7</sup> The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.<sup>8</sup>

11. The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that operational or other reasons necessitate the non-conforming agreement.<sup>9</sup> PJM characterizes most of the proposed deviations from its *pro forma* interconnection agreement as minor and non-substantive. These non-substantive deviations from PJM's *pro forma* interconnection agreement are rejected. However, PJM raises several specific justifications for various portions of the Interconnection Agreement that we discuss in more detail below.<sup>10</sup>

12. We also reject PJM's argument that we should accept this agreement because it resembles another agreement that was accepted by delegated letter authority. Actions taken by the Commission staff by delegated authority "do not constitute precedent binding the Commission in future cases."<sup>11</sup>

13. Nevertheless, the Commission will conditionally accept the executed Interconnection Agreement, subject to PJM's re-filing of the agreements to conform with

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<sup>6</sup> See *id.* at P 10 ("it has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues").

<sup>7</sup> *Id.* at P 913-15.

<sup>8</sup> Order No. 2003-B at P 140 ("each Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each nonconforming provision").

<sup>9</sup> See, e.g., *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098 at P 9 (2005) (*PJM Order*); see also *El Paso Electric Co.*, 110 FERC ¶ 61,163 at P 4 (2005).

<sup>10</sup> Simply stating that the Parties "negotiated" for or "agreed" to the non-conforming changes is not sufficient justification. See *PJM Order* at n. 13.

<sup>11</sup> See, e.g., *Midwest Generation, L.L.C.*, 95 FERC ¶ 61,231 (2001).

its *pro forma* Interconnection Agreement within 30 days of the issuance of this order, subject to the conditions discussed below.

**A. Non-Conforming Provisions that Correspond to Provisions in a Cancelled Agreement**

14. PJM asserts that certain provisions in the OCIA should be carried through into this Interconnection Agreement. We reject this argument. Since Hackensack is requesting an increase in the capacity of its existing facility, this is a new Interconnection Agreement, and the terms of an old interconnection agreement have no bearing on a new post-Order No. 2003 interconnection agreement. Any new interconnection agreement entered into after the effective date of PJM's Order No. 2003 compliance filing must follow the PJM *pro forma* interconnection agreement or meet the burden of justifying why it does not.<sup>12</sup> To allow parties to enter into a new interconnection agreement, while retaining selected portions of an old agreement, would not be just and reasonable and would deny Interconnection Customers the protections afforded by Order No. 2003.

**B. Proposed Changes to the Indemnity Provision**

15. PJM asserts that PSE&G should be able to retain the one-sided indemnity provision from the OCIA. A one-sided indemnity agreement is directly contrary to Order No. 2003's bi-lateral indemnity requirements<sup>13</sup> and the three-way indemnity provision in PJM's *pro forma* interconnection agreement.<sup>14</sup> The indemnity provision proposed by PJM is in favor of PSE&G, and cuts against Hackensack's interests. In proposing a variation from its *pro forma* interconnection agreement (especially variations detrimental to the Interconnection Customer), PJM bears the burden of "explaining the unique circumstances of the interconnection and why these circumstances necessitate the filing of a non-conforming interconnection agreement."<sup>15</sup>

16. PJM argues that using the indemnity provision found in its *pro forma* interconnection agreement could result in costs being passed on to PSE&G's ratepayers. There are several flaws in that argument. First, PJM does not provide any justification unique to the circumstances of this interconnection. Any Transmission Provider, faced with making an indemnity payment to an Interconnection Customer, has to pass the costs on to someone -- whether ratepayers or shareholders. Second, PJM's *pro forma*

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<sup>12</sup> See Order No. 2003 at P 911.

<sup>13</sup> See *id.* P 637.

<sup>14</sup> See section 64 of the interconnection portion of PJM's OATT.

<sup>15</sup> See Order No. 2003-B at P 140 ("each Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each nonconforming provision").

indemnity provision adequately protects PSE&G's ratepayers, as it protects those of every Transmission Provider in PJM. The provision specifically limits liability "for any action [taken] in responding to an Emergency Condition, so long as such action is made in good faith [and] is consistent with Good Utility Practice."<sup>16</sup> In non-Emergency Conditions, a Party must either violate the terms of the interconnection agreement or act with "negligence or willful misconduct" in order to be liable under PJM's *pro forma* indemnity agreement.<sup>17</sup>

**C. Proposed Changes to the Inspection, Testing, Emergency Conditions, and Disconnection Provisions**

17. PJM also asserts that certain changes to its *pro forma* interconnection agreement are needed in order preserve the reliability and safety of PSE&G's system. We are very sensitive to arguments that particular changes to an interconnection agreement are necessary in light of the specific engineering conditions of a given interconnection.<sup>18</sup> However, PJM has not yet met its burden of explaining why the inspection, testing, disconnection and emergency provisions of its *pro forma* interconnection agreement are insufficient to protect reliability. The fact that the provisions were present in a past agreement is not sufficient justification for filing a non-conforming agreement now.

**D. Editorial Changes and Inclusion of Definitions as Attachments**

18. As discussed in the *PJM Order*, a Transmission Provider seeking a case-specific deviation from its *pro forma* interconnection agreement bears a high burden to justify and explain that its changes are necessary (not merely "consistent with or superior to") changes.<sup>19</sup> Many of the editorial changes proposed by PJM do not appear to meet this high threshold. The *PJM Order* also discussed the inclusion of definitions from PJM's OATT as an attachment to the Interconnection Agreement<sup>20</sup> and the deletion of *pro forma* interconnection agreement provisions that do not apply to this specific interconnection.<sup>21</sup> PJM is directed to revise the Interconnection Agreement to comply with the relevant requirements of the *PJM Order* as well, or to specify why the terms it proposed should be accepted.

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<sup>16</sup> *Id.* section 64.7, "Limited Liability in Emergency Conditions."

<sup>17</sup> *Id.* section 64.1, "Indemnity."

<sup>18</sup> This is particularly true of this interconnection to a low voltage, non-networked, Commission-jurisdictional facility.

<sup>19</sup> *PJM Order* at P 9.

<sup>20</sup> *Id.* at PP 11-13.

<sup>21</sup> *Id.* at PP 14-15.

**E. Request for Waiver**

19. Pursuant to *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), we grant waiver of the 60 day notice requirement, and in accordance with the agreement of the parties, we will make the effective date of this service agreement November 8, 2004.

The Commission orders:

(A) The Interconnection Agreement is accepted for filing, subject to the conditions discussed in the body of this order.

(B) The notice of cancellation is accepted, effective November 8, 2004, as requested.

(C) The Commission grants waiver of its prior notice requirement, to allow the Interconnection Agreement to become effective November 8, 2004, as requested.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.